



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Dentistry/Department of Health Professions
VAC Chapter Number:	18 VAC 60-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Dentistry
Action Title:	Fee increase
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including dentists and dental hygienists, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. An annual renewal fee for a dentist would be increased from \$100 to \$150 and for a dental hygienist from \$40 to \$50. Other fees would be increased correspondingly. Some fees would be reduced, such as the application fee for dental hygienists and the reinstatement fees for both professions.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site

addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory Boards including the responsibility to promulgate regulations and levy fees.

§ 54.1-2400. General powers and duties of health regulatory Boards.--The general powers and duties of health regulatory Boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such Board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such Board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory Board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory Board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate Board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem*

appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the Board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the Board or a panel of the Board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. *To convene, at their discretion, a panel consisting of at least five Board members or, if a quorum of the Board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full Board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for an increase in fees is found in § 54.1-113:

§ 54.1-113. Regulatory Boards to adjust fees.

Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed to ensure that each Board has sufficient revenue to cover its expenditures. At the conclusion of fiscal year '00, the deficit of the Board was \$135,517; it is projected that by the close of the 2000-2002 biennium, the Board of

Dentistry will incur a deficit of \$268,947 and will continue to have a deficit through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Dentistry. Without adequate funding, the licensing of practitioners could be delayed, and dental care in the Commonwealth would be less accessible. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Section 20 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to licensing, investigations and disciplinary proceedings. Renewal fees for dentists will increase from \$100 to \$150 per year; renewal fees for dental hygienists will increase from \$40 to \$50 per year. While most of the fees are being increased correspondingly, the dental hygienist application fees for licensure by examination or by endorsement are being decreased. Miscellaneous fees for a returned check and for an inspection are added consistent with other boards within the Department.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

Fee increases proposed by the Board of Dentistry should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide dental services to the public. For example, an increase in the renewal fee will result in an additional \$50 per year for a dental license and \$10 per year for a dental hygienist. It is not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be considerable disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the

Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of investigation of complaints against dentists and dental hygienists. There may be delays in adjudicating cases of substandard practice, resulting in potential danger to the patients in the Commonwealth.

Practitioners licensed by the Board of Dentistry will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board and the Department of Health Professions are solely funded by the fees charged to applicants and licensees. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Dentistry and within other divisions of the Department of Health Professions since the agency is dependent on revenues from the Board for approximately 5.19 % of its costs.

3) Other pertinent matters of interest to the regulated community, government officials, and the public:

During the development of the NOIRA and proposed regulations, representatives of Virginia Dental Association and the Virginia Dental Hygienist Association have been present. There was no comment from dentists or from the VDA but there were seven comments from dental hygienists during the 30-day comment period on the NOIRA.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed dentists and dental hygienists.

Estimate of number of entities to be affected:

Currently, the following are licensed by the Board:

Dentists	
Active	4861
Inactive	471
Dental hygienists	
Active	3232
Inactive	332
Dental temporary permit	3
Full-time faculty	13
Dental hygiene teachers	2
Oral/Maxillofacial surgeons	164
Certification for cosmetic procedures	2

Projected costs to the affected entities:

The cost for compliance will depend on the type of license held and the particular fee being paid. For example, if a dentist pays his renewal before the expiration date, he will pay \$150; if the renewal fee is late, he will owe an additional \$50. A dental hygienist will owe \$50 for renewal and another \$20 if the renewal is late. Applicants for dental licensure will not have an increase in the application fee. Dental hygienist applicants for licensure by examination will have a decrease in the application fee from \$160 to \$135 and for licensure by endorsement from

\$225 to \$135. For the projected costs to each of the affected entities and a projection of the number of persons or entities that will be affected, see a description of the changes below.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 60-20-20. License renewal and reinstatement.

- The fee for renewal of an active license or permit to practice or teach dentistry will be increased from \$100 to \$150, and the fee for renewal of an active license or permit to practice or teach dental hygiene will be increased from \$40 to 50.
- The fee for renewal of an inactive license will be increased from \$65 to \$75 for dentists. There is no change in the fee for dental hygienists.
- The late fee for a licensee who does not return the renewal form and fee by the deadline will continue to be \$50 for dentists and decrease from \$35 to \$20 for dental hygienists.
- The requirement for late renewal of a license will be amended to permit such renewal for one year of the expiration date; current regulations require reinstatement after 30 days.
- An amendment will make it clear that a license of any person who does not return the completed renewal form and fees by the deadline will automatically expire and become invalid and his practice of dentistry/dental hygiene is illegal.
- A proposed amendment deletes the requirement on the board to notify the affected licensee of the expiration and the reinstatement procedures after the deadline has passed. Discontinuation of the requirement for an expiration notice will save staff time and mailing expenses.
- Rather than paying accumulated penalty fees which could total \$600 for dentists and \$420 for dental hygienists, any person whose license has expired who wishes to reinstate would be able to do so by paying the renewal fee and the reinstatement fee of \$225 for dentists and \$135 for dental hygienists.

18VAC60-20-30. Other fees.

- The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist is reduced from \$160 to \$135.

- A fee for a duplicate wall certificate would be increased from \$15 to \$25.
- A restricted license issued in accordance with §54.1-2714 of the Code of Virginia has had the same renewal fee (\$100) as a dentist, so the proposed renewal fee would be \$150.
- License by endorsement for dental hygienists would be reduced from \$225 to \$135.
- A fee that are currently collected by the Department but not set in regulations would be added; it is \$25 for a returned check.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In the Code of Virginia, § 54.1-2400 requires the Board to: “levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.” In order to carry out its statutory mandate to protect the public health, safety and welfare and to levy sufficient fees to cover the direct expenses of the Board of Dentistry and the departmental expenses allocated to the Board, an increase in fees was necessary.

Comparison of renewal fees in other states

Comparative data on dentistry fees in other states would indicate that renewal fees in Virginia are the lowest in the area. Fees for renewal of a dental license in neighboring states are: - \$155/annual in NC, \$170/annual in SC, \$150/annual in TN; \$250/annual in MD. Fees for renewal of a dental hygienist license in neighboring states are: \$70/annual in NC, \$110/annual in MD, \$67/annual in SC, and \$110/annual in TN. In addition, other states impose additional fees such as: \$50 for coronal polishing exam, \$100 for specialty certification (TN); \$180 for specialty certification (SC); \$50 for anesthesia permit (NC); \$700 application and \$300 renewal for general anesthesia permit, a parenteral sedation permit or a facility permit (MD).

Renewal Schedule

Dentists and dental hygienists licensed by the Board renew their licenses every year by March 31st. Therefore, it is essential to have an increased fee in place by the end of 2002 in order to prevent the deficit from further accumulating by the time licenses are again renewed in the year 2003.

Options for fee increases

The Board considered two proposals for increasing fees. The bulk of the income is derived from renewal fees, and the renewal fee is used as the basis for calculating the appropriate amount of other fees including those for applications, late renewal and reinstatement. The first option was

to increase the renewal fee for a dentist from \$100 to \$140 and a dental hygienists from \$40 to \$50; other fees would be increased correspondingly and some fees would actually decrease. With option #1, the resulting **deficit** at the end of FY 04 would be approximately \$65,000. Option #2 proposed an increase in dentist renewal fees from \$100 to \$150 and an increase of \$10 for dental hygienist renewal. With option #2, there is a small surplus of \$37,570 at the end of FY 04. The Board found option #1 with the continuance of the deficit to be unacceptable.

With the fee increase, the revenue of the Board for FY03 is projected to be \$1,082,710. However, with expected move of the Department in FY03 to new offices, the budget of the Board will increase to approximately \$953,097 for that year, resulting in a continuation of the deficit. The problem lies with an accumulation of debt, expected to be \$268,947 by July 1, 2002. As of January 31, 2002, the deficit stood at \$525,545, but renewal fees are typically collected in February and March. In FY04, the revenue is anticipated to exceed expenditures (\$1,089,260 in revenue versus \$912,356 in expenditures). Since the Board will carry forward a deficit from the previous two fiscal years, it will continue to have a deficit of approximately \$139,334 by the end of FY03 but be able to produce a small surplus of \$37,570 by the end of FY04. If the Board is able to under-spend its budget in the direct costs portion and conservatively estimate its revenue, it may be able to enact a one-time decrease in fees by the end of FY06.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was received until November 21, 2001. During the 30-day comment period, there were comments from seven dental hygienists who expressed their concerns about an increase in renewal fees. The comments and agency response are summarized below:

- Several of the commenters had incorrect information. One objected to the fee increasing from \$15 to \$60 – in fact, the current renewal fee is \$40 and the proposed fee is \$50. Others suggested that the Board intended a 50% increase.
- Several commenters complained that hygienists were bearing the burden for investigations and disciplinary actions against dentists – both direct and allocated costs (for board and departmental staff, data systems, board costs, etc.) of the Board of Dentistry are shared by all licensees. While dentists do have a higher percentage of disciplinary cases, they also pay triple the renewal fee of a hygienist.
- Several suggested a biennial renewal would be preferable – the Board believes that a biennial renewal would be more burdensome for licensees. There would be very little saving to the Board if a biennial renewal was adopted.
- One proposed that the services of the Attorney General and other personnel should come from tax dollars in the General Fund – the Department and its boards are non-general fund agencies that must support all their activities from licensee fees.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed regulations were considered in an open meeting with a number of persons representing various dental groups present. There were no questions or comments about the need for clarification. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations are currently under review and will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on disposable family income, as dentists and dental hygienists will experience an increase in the cost of maintaining a license. Compared to other costs of doing business, such as finding and hiring qualified personnel and third party billing, licensure fees are relatively insignificant.